DIRECT INVESTIGATION REPORT

CONTROL OF ROADSIDE BANNERS

December 2008

Office of The Ombudsman

Hong Kong

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EXECUTIVE SUMMARY

Direct Investigation
Control of Roadside Banners

Background

Government has a Management Scheme for the Display of Roadside Non-Commercial Publicity Materials ("the Scheme"), under which Government departments, Legislative Council ("LegCo") Members, and District Councils ("DCs"), DC Members and certain non-profit making organisations may put up roadside banners at designated spots for display for specified period. This is administered by the Lands Department ("Lands D").

2. Earlier, in August 2006, we completed a preliminary study on the Scheme, examining whether appropriate measures were in place to prevent proliferation of roadside banners and to ensure their secure installation and timely removal. We have been monitoring progress since.

3. We have continued to receive complaints about unclear rules and misuse of the Scheme, e.g. some banners carrying only minor, or even no, mention of the individual or organisation allocated the banner spot, as if the spot had been "loaned out" or transferred".

4. The Ombudsman, therefore, initiated a direct investigation to examine the Scheme in greater detail.

The Scheme

5. Under the Scheme, Lands D approves applications from **organisations** for displaying banners case by case, each for two calendar months less the last two days. In contrast, **LegCo and DC Members** are allocated spots for the entire tenure of their office. Moreover, their banners are not subject to Lands D's pre-vetting.

6. According to Lands D, spots created under the Scheme number 21,821 in total. A breakdown of these spots is as follows:

Number of Spots Created

Allocated	
LegCo Members (60)	8,096
DC Members (534)	5,171
Available for Application	
Non-profit making organisations	5,109
DCs (18) and committees	1,117
Government departments (61)	2,328
Total:	**21,821**

7. Lands D has published Guidelines for the Scheme, which govern, *inter alia*, the approved contents of banners as follows:

Allowed	Not Allowed
■ Events of public interest or non-commercial activities ■ Promotion of community services ■ Information of general interest and benefit to the public provided by LegCo and DC Members and political bodies	■ Promotion of commodities or services at a fee or fee-paying training courses and activities ■ Contents in breach of the laws of Hong Kong ■ Information of an obscene or objectionable nature

Observations and Comments

8. Roadside banners constitute a form of encroachment upon public space and may cause visual obstruction and pollution. Where they block sightline and distract motorists or wear out and come loose, they pose traffic hazard, for drivers and pedestrians. Display of such banners should, therefore, be properly monitored and controlled.

Absence of Clear Statement of Objective

9. The Scheme impacts on the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. Sacrifice of such rights ought to be justified on grounds of public interest and the justifications should be duly promulgated. Hence, a clear statement of the objective of the Scheme is necessary to explain why there should be authorised displays and why certain individuals, organisations, kinds of activities or messages should be allocated spots for display.

Lack of Rules to Avoid Transfer of Privilege

10. As any individual or organisation allocated a banner spot enjoys a privilege at public expense, such privilege should not be regarded as a freely disposable proprietary right. Consequently, there should be clear rules to prohibit transfer or "loaning out", particularly a specific requirement for the individual or organisation allocated the spot to be conspicuously acknowledged on the banner.

Loose Guidelines on Banner Contents

11. The current Guidelines are too loosely worded to be useful public information on what is permitted for display on banners. Nor can the Guidelines adequately serve as benchmark for enforcement. For example, "events of public interest", "non-commercial activities", "promotion of community services" and "information of general interest and benefit to the public" are all wide open to interpretation and may easily result in contention. Clearer definition is called for.

Inadequate Public Consultation

12. Lands D had in the main consulted LegCo and DCs on the Scheme, without special regard to the fact that all LegCo and DC Members were beneficiaries of the Scheme and their views and decisions inevitably could be perceived as biased towards self-interest.

13. For proper balance of different interests, Lands D should enlist the help of the District Offices of the Home Affairs Department ("HAD") and seek views from the public at large (e.g. through open consultation or opinion survey), or from organisations representing the interests of affected parties (such as residents groups or motorists organisations) before consulting LegCo and DC Members.

Proposal Unjustifiably Shelved

14. Lands D has proposed to replace the banner spots at central dividers of roads or close to pedestrian crossings with spots posing less risk to motorists and pedestrians. The Government departments consulted raised no objection, but HAD asked that new spots be created in compensation. Lands D eventually decided not to pursue the proposal on the following grounds:

(a) The central dividers are regarded as prime sites by the users and replacements cannot be easily found.

(b) When LegCo Members were previously consulted on the Scheme, they had asked for even more banner spots. It was, therefore, unlikely that LegCo and DCs would accept the proposal.

15. We take exception to these points, particularly the assumption that LegCo and DC Members would necessarily object to an overall reduction in the number of banner spots. Surely, road safety should not be compromised for administrative convenience or political expediency. We find it unfair to Members for Lands D to assume that they would not accept the proposal, which was based on self-evident public interest. We urge Lands D to follow up our recommendation and conduct public consultation, involving HAD and the relevant policy bureaux as necessary.

Recommendations

16. In the light of the above observations , The Ombudsman recommends that the Administration take action as follows:

Lands D in conjunction with the relevant bureaux

(1) to articulate the objective of the Scheme for public information;

Lands D

(2) to revise the rules for proper administration of the Scheme, including –

(i) prohibition of transfer, "loaning out" or assignment of allocated spots;

(ii) clearly visible acknowledgement, on the banner, of the individual or organisation allocated the banner spot;

(iii) a clear indication in practical terms what contents may be allowed and what not for the banners;

Lands D with the help of HAD

(3) to seek views from the public at large or interest groups before consulting LegCo and DCs;

(4) to reconsider replacement or cancellation of the designated spots at central dividers of roads or close to pedestrian crossings.

17. Lands D generally accepted our recommendations.

Office of The Ombudsman
December 2008

1

INTRODUCTION

BACKGROUND

1.1 Publicity banners at roadside have for years been a feature of Hong Kong's street scene. By nature, these banners constitute a form of encroachment upon public space and may cause visual obstruction and pollution. Where they block sightline and distract motorists or wear out and come loose, they pose traffic hazard, for drivers and pedestrians. Display of such banners should, therefore, be properly monitored and controlled.

1.2 Government has a Management Scheme for the Display of Roadside Non-commercial Publicity Materials ("the Scheme"), under which Government departments, Legislative Council ("LegCo") Members, District Councils ("DCs"), DC Members and certain non-profit making organisations may be given approval to put up such banners for display for specified period. This is administered by the Lands Department ("Lands D"). Unauthorised banners are removed in joint operations by Lands D and the Food and Environmental Hygiene Department ("FEHD"), with the former checking whether the banners are authorised and the latter taking records and removing unauthorised banners under the Public Health and Municipal Services Ordinance (Cap 132)[1].

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[1] *Under section 104A of the Public Health and Municipal Services Ordinance (Cap 132), the display of publicity materials without permission is prohibited. The Director of Food and Environmental Hygiene is empowered under 104C of the Ordinance to remove publicity materials which contravene section 104A.*

1.3 In August 2006, The Ombudsman completed a direct investigation assessment on whether appropriate measures were in place to prevent proliferation of roadside banners and to ensure their secure installation and timely removal. On completion of the assessment, a number of suggestions were made to Lands D and FEHD, such as limiting the number of designated spots, tightening the criteria for designation of spots, imposing requirements to ensure tidiness, removing dilapidated banners in a timely manner and keeping statistics. Details are at **Annex 1.** We have been monitoring progress since.

1.4 Despite the above development, complaints have continued to be lodged with this Office. These have focussed on how roadside banners are used by LegCo and DC Members, summarised as follows:

(a) The banner features more than one person, with only minor coverage given to the individual or organisation allocated the banner spot.

(b) The banner is used to promote personalities affiliated to the individual or organisation allocated the banner spot (e.g. a political aide or member of the same political party), not the individual himself or herself.

(c) The banner features solely a person or persons apparently unrelated to the individual or organisation allocated the banner spot, as if the spot has been "loaned" or "assigned" to some other person or persons, possibly for some consideration.

1.5 Given the developments since our assessment in 2006 and the continuing complaints, The Ombudsman saw a need to examine the Scheme in greater detail. After preliminary inquiries and scrutiny of relevant information from Lands D, The Ombudsman informed the Director of Lands on 19 September 2008 of her decision to initiate a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap 397).

AMBIT

1.6 This investigation has focused on:

(a) the intent and purpose of the Scheme;

(b) the extent to which the rules of the Scheme accurately reflect its purpose;

(c) the effectiveness of control measures, including rules on contents of banners and prevention of misuse of banner spots;

(d) the criteria for designation of banner spots;

(e) arrangements for public consultation; and

(f) Lands D's decision not to pursue one of the proposals put to them on completion of our previous study (**para. 1.3**).

INVESTIGATION PROCESS

1.7 Based on the information collected through our preliminary inquiries (**para. 1.5**), we produced a draft investigation report, outlining our tentative observations and views, and sent it to the Director of Lands on 19 September 2008 for comments. We received written comments from Lands D on 3 November 2008 and had meetings with Lands D officers on 29 September 2008 and the Director of Lands on 2 December 2008. This final report was issued on 15 December 2008.

2

THE SCHEME

BACKGROUND

2.1 Before 2003, under the then prevailing policy on display of banners, posters and bunting in public areas, only those promoting "events and exhibitions of general interest and benefit to the public" might be approved by Lands D. Examples were special functions, trade fairs and festivals. The 1980s and 90s saw the proliferation of roadside banners put up freely by all and sundry, amongst them politicians and estate agents, without due regard to traffic safety or general aesthetics. In the early 1990s, Government began to formulate measures to address the problem. Two pilot schemes to regulate roadside banners were run in June 1993 and November 1996 respectively. Following rounds of consultation in the ensuing years, the Scheme was introduced in April 2003:

Time of Consultation	Bodies Consulted
August 1998 – March 1999	LegCo Panel on Planning, Lands and Works Provisional Urban Council Provisional Regional Council Provisional District Boards District Management Committees
June 2002 – October 2002	District Councils
March 2003	LegCo Panel on Planning, Lands and Works

2.2 According to Lands D's discussion paper to the LegCo Panel on Planning, Lands and Works in March 2003, the objective of the Scheme is:

> "To put in place a more efficient system for the management and processing of applications for the display of roadside non-commercial publicity materials".

2.3 The paper gives the practical reason for introducing the Scheme, but is silent on why there should be **authorised displays** and why certain individuals, organisations, kinds of activities or messages should be allocated spots for display. As such spots are prime site on public streets, they are a privilege at public expense. However, the objective of the Scheme has never been clearly stated.

APPROVAL FOR DISPLAY

2.4 Beneficiaries of the Scheme are limited to non-profit making bodies, LegCo Members, DCs and DC Members as well as Government departments. LegCo and DC Members have been the major users.

2.5 The numbers of spots open for application by **organisations** are listed in **Table 1**:

Table 1: Number of Spots for Organisations

Organisation	Number of Spots
Non-profit making bodies	A minimum of 100 spots in each district
DCs and committees	A minimum of 30 spots for each DC and committees
Government departments	A minimum of 50 spots in each district

Approval is given case by case, each for two calendar months less the last two days. The contents of the banners are subject to prior approval.

2.6 In contrast, **LegCo** and **DC Members** are allocated a prescribed number of designated spots for the entire tenure of their office. The numbers of spots allocated are listed in **Table 2**:

Table 2: Number of Spots for LegCo and DC Members

LegCo/DC Member	Number of Spots
LegCo Member from Geographical Constituency	50 in each DC district within his/her own Geographical Constituency[2]
LegCo Member from Functional Constituency	9 in each DC district
DC Member	10[3] in his/her own constituency

No case-by-case approval is required for LegCo and DC Members. Hence, the contents of their banners are not subject to prior vetting or approval.

2.7 According to Lands D, spots created under the Scheme number 21,821 in total. A breakdown of spots allocated to LegCo and DC Members prior to the LegCo Election in September 2008 and spots available for application by organisations is in **Table 3**:

Table 3: Number of Spots Created

Allocated	
LegCo Members (60)	8,096
DC Members (534)	5,171
Available for Application	
Non-profit making organisations	5,109
DCs (18) and committees	1,117
Government departments (61)	2,328
Total:	**21,821**

[2] With the exception of eight districts (Tai Po, Sha Tin, Sai Kung, Yuen Long, Islands, Tsuen Wan, Kwai Tsing and Wan Chai).
[3] *Subject to any advice of individual DCs.*

DESIGNATION OF SPOTS

2.8 The locations of the spots for non-profit making bodies, DCs as well as Government departments are determined jointly by DCs, District Offices and District Lands Offices ("DLOs") under Lands D.

2.9 Spots for LegCo and DC Members have been designated in consultation with the Members themselves upon introduction of the Scheme. At the start of the tenure of their office, LegCo and DC Members can choose from the spots designated, as shown in **Table 2**. Competing demands are resolved by ballot conducted by the relevant DLO.

2.10 For road safety reasons, spots will not be designated at the following locations:

(a) flyovers or footbridges;

(b) within 30 metres on the traffic upstream side of a pedestrian crossing;

(c) central dividers of roads within 30 metres from road junctions or pedestrian crossings; and

(d) at the junction of a dual way road and a major road[4].

CONTENTS OF BANNERS

2.11 According to Lands D's Implementation Guidelines ("the Guidelines") (see **Annex 2**) for the Scheme, banners may carry only the following contents:

(a) events of public interest or non-commercial activities (clause 7(a)(i));

(b) promotion of community services (clause 7(a)(ii)); and

[4] *Banner spots within a one-way street will not be subject to the 30-metre safety restriction if they do not obstruct the views of drivers getting on to a major road.*

(c) information of general interest and benefit to the public provided by LegCo or DC Members and political bodies outside election periods (clause 7(a)(iii)).

2.12 The following contents are prohibited:

(a) promotion of commodities or services provided at a fee or any form of fee-paying training courses and activities, other than social service related events organised jointly by Government departments and NGOs or charitable bodies (clause 7(a)(iii));

(b) contents in breach of the laws of Hong Kong (clause 7(c)); and

(c) information of an obscene or objectionable nature (clause 7(c)). (The terms "obscene" and "objectionable" are not defined.)

2.13 However, the Guidelines expressly state that "publicity materials may contain names of other persons apart from that of the applicant" (clause 7(d)).

2.14 LegCo and DC Members are issued copies of the Guidelines before being allocated banner spots. For organisations, if the Guidelines are not attached to the application form, the organisations would normally be advised to download the Guidelines from the Lands D website, or Lands D would provide a copy by fax. The public may obtain Guidelines from DLOs or view the document on the Lands D website.

PRE-VETTING

2.15 Non-profit making organisations, DCs and Government departments are required to submit to the DLO the layout and contents of the banner with their application. LegCo and DC Members are exempt from this requirement.

SUBSEQUENT MONITORING

2.16 Lands D staff conduct regular inspections to monitor compliance with the Guidelines. 1,784, 1,727 and 1,461 regular inspections were conducted jointly

by Lands D and FEHD in 2005/06, 2006/07 and 2007/08 respectively. On discovery of non-compliance, Lands D will advise the individual or organisation allocated the banner spot to rectify the irregularities within a specified time, which ranges from a few hours to a few days, depending on the nature of irregularities. If the irregularities remain, Lands D will withdraw its approval and, without further notice, will refer the case to FEHD for removal. On discovery of banners displayed at unauthorised spots or outside the authorised period, FEHD will remove them immediately.

3

CASE STUDIES

CASE A

3.1 In May 2008, the media reported banner spots being "on loan" to a political body. The banners featured the leading figures of that political body rather than the individual allocated the banner spots. While bemused as to how this could have happened, the media suggested that the practice would have been permissible under the Scheme if there had been proper acknowledgement, on the banners, of the individual actually allocated the banner spots.

3.2 On our enquiry, Lands D confirmed that LegCo and DC Members are not allowed to loan out their spots under the rules of the Scheme. Hence there was no question of requiring Members to notify or apply to Lands D for permission to loan out. Subsequently, a Lands D officer further explained as follows:

(a) LegCo and DC Members are required to display their names on the banners displayed at their spots.

(b) Provided that the name of the LegCo or DC Member or organisation allocated the spot appears on the banner, Lands D would accept that there has been no breach of the rules.

CASE B

3.3 An organisation applied for spots to display banners featuring a slogan in support of a candidate in a widely reported election outside Hong Kong. Lands D refused its application on the grounds that the contents of the banners did not fall within clause 7(a) of the Guidelines, which provides that the contents of banners should include only:

(a) events of public interest or non-commercial activities;

(b) promotion of community services; or

(c) information of general interest and benefit to the public provided by LegCo or DC Members and political bodies outside election periods.

3.4 Lands D did not explain why the contents of the banners concerned were outside the three categories above. In response to our inquiry, Lands D stated that the contents of the banners did not come within the meaning of:

(a) matters of community concern; or

(b) promotion of community services.

3.5 While we accept that the contents of the banners were outside the approved category of "promotion of community services", it is arguable whether the subject matter was not an "event of public interest" or "information of general interest… to the public provided by… political bodies", and as such can be approved under the Guidelines. Our observation is that contention can be avoided if the objective of the Scheme and the Guidelines are clearer.

OBSERVATIONS

3.6 These two cases illustrate some fundamental deficiencies in the Scheme. With Case A (**paras. 3.1 – 3.2**), it is unsatisfactory that a crucial matter of principle (whether the spots are transferable) is not clear from the Guidelines and is left to the interpretation of individual officers administering the Scheme. This may

well result in inconsistency in implementation.

3.7 With Case B (**paras. 3.3 – 3.4**), as observed in paragraph 3.5, the difficulty is with the rules being too general. Essentially the objective of the Scheme has not been clearly formulated, defined or understood (**para. 2.3**). On record, the Scheme is "to control the display of roadside non-commercial materials", but this does not give the policy reason why some displays are allowed while others are not and why certain individuals or organisations are to be favoured. Without a clear and proper statement of its objective, the rules of the Scheme cannot be accurately or satisfactorily interpreted.

4

OVERALL COMMENTS

OBJECTIVE OF THE SCHEME

4.1 The Scheme involves, and in a way impacts on, the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. The banner spots provided under the Scheme are prime spaces at public locations. To this extent, individuals or organisations allocated the spots enjoy a concession at public expense. Sacrifice of such rights ought to be justified on grounds of public interest and use of the spots, properly controlled. There should be stringent rules to ensure the proper use of these valuable concessions; hence, the need for a clear statement of the objective of the Scheme and due compliance with any rules for its proper administration. It is important for Lands D staff and the public to appreciate why the spots are made available to certain individuals and organisations and why it is necessary to control the use of the spots. In this context, Lands D's definition of the objective of the Scheme (**para. 2.2**) is deficient. It should not be difficult for Lands D to re-establish the objective of the Scheme, taking into account its advent from major Government campaigns, such as the introduction of Representative Government, the promotion of District Administration and Community Building, as well as the developments over the years.

QUESTION OF LOANING OUT

4.2 As any individual or organisation allocated a banner spot enjoys a privilege at public expense, such privilege cannot be regarded as a proprietary right to be assigned or disposed of at will. Although Lands D confirms that in principle

allocated spots are not transferable, this has not been made explicit in the documentation for the Scheme. For clarity, Lands D should be forthright on its policy stance and there should be a rule precisely prohibiting transfer or "loaning out" in the Guidelines.

4.3 Moreover, all banners should have a conspicuous acknowledgement of the individual or organisation allocated the spot. The subject matter must be relevant to the objective of the Scheme and the individual or organisation allocated the spot acknowledged as the chief beneficiary. This would avoid total alienation of the banners from the party actually given the privilege to display them.

CONTENTS OF BANNERS

4.4 The current guidelines on contents permitted on the banners (**paras. 2.11 and 2.12**) are too loosely worded to be useful public information or benchmark for enforcement. For instance, "events of public interest" and "non-commercial activities" are wide open to interpretation. Likewise, "promotion of community services" and "information of general interest and benefit to the public" can be just about anything of interest to the public.

4.5 In the existing Guidelines, Lands D is already using a dual approach: a "positive list" to illustrate the scope of contents permitted for banners (**para. 2.11**) and a "negative list" for contents not allowed (**para. 2.12**). This approach is useful but needs to be revised to indicate clearly in practical terms what may be allowed and what not. Lands D should be able to do this, once the objective of the Scheme is articulated. Public consultation should also be conducted, as citizens' rights are involved.

PUBLIC CONSULTATION

4.6 Both the design and the administration of the Scheme have to strike a balance between the interests of the public and the wishes of those who are to be allocated spots eventually. Records show that Lands D had in the main consulted LegCo and DCs on the introduction of the Scheme and on the formulation of the rules, without special regard to the fact that all LegCo and DC Members were beneficiaries of the Scheme, and inevitably could be perceived as having a bias towards

self-interest. In this regard, we note that Lands D has not employed other channels of public consultation in parallel.

4.7 Possible conflict of interests should be duly managed. For proper balance, Lands D should enlist the help of the District Offices of the Home Affairs Department ("HAD") and seek views from the public at large (e.g. through open consultation or opinion survey), or from organisations representing the interests of affected parties (such as residents groups or motorists organisations) before consulting LegCo and DC Members.

LOCATION OF DESIGNATED SPOTS

4.8 Roadside banners can come loose over time or in poor weather conditions and pose traffic hazard, especially where they are attached to central dividers of roads or close to pedestrian crossings. In this light, on completion of our study in August 2006 (**para. 1.3**), The Ombudsman suggested that Lands D re-examine the criteria for selection of designated spots.

4.9 Consequently, Lands D considered replacing the banner spots at central dividers of roads or close to pedestrian crossings with spots posing less risk to motorists and pedestrians. Lands D has consulted HAD, the Transport Department, the Highways Department, FEHD and the Registration & Electoral Office. Those departments raised no objection to the proposal, but HAD asked that new spots be created in compensation. Lands D eventually decided not to pursue the proposal on the following grounds:

(a) The central dividers are regarded as prime sites by the users and replacements cannot be easily found.

(b) When LegCo Members were previously consulted on the Scheme, they had asked for even more banner spots. It was, therefore, unlikely that LegCo and DCs would accept the proposal.

4.10 Lands D also stated that FEHD would step up patrol and clearance of banners which have come loose after spells of bad weather.

4.11 We appreciate Lands D's conscientious attempt to explore alternative locations for banner spots to enhance road safety. However, we take exception to the reasons advanced (**para. 4.9 (a) and (b)**) for not pursuing the proposal. We are particularly surprised to see the assumption that LegCo and DC Members would necessarily object to an overall reduction in the number of banner spots. Surely, Members would not wish road safety to be compromised for administrative convenience or political expediency. It is not fair to LegCo and DC Members for Lands D to assume that they would not accept the proposal, which was based on self-evident public interest. We urge Lands D to follow up our recommendation and conduct public consultation, as suggested in paragraph 4.7 above, involving HAD and the relevant policy bureaux as necessary.

5

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

5.1 Many prominent cities in the world place much emphasis on protecting the aesthetics of their public space. An attractive cityscape can contribute to economic benefits and better quality of life. Proliferation of roadside banners, often dirty and tatty, is widely regarded to be detrimental to the outlook of a city. Furthermore, many city authorities spare no effort to guard against the traffic hazard posed by roadside banners. As for Hong Kong, Government has set its goal to promote our city as Asia's world city. To justify this title of pride, it should set up and enforce stringent rules to manage and control roadside banners, to preserve the aesthetics of our public space particularly in central locations.

5.2 Government has in place the Scheme since April 2003 to regulate the display of roadside banners. However, the following deficiencies are evident in the Scheme:

(a) A clear statement of its objective is absent (**para. 4.1**).

(b) The Scheme lacks a rule to ensure that the privilege to display banners in public space cannot be freely assigned or disposed of (**para. 4.2**).

(c) The current guidelines on permitted contents of banners are too loosely worded (**para. 4.4**).

(d) The views of the public at large have not been given due weight in the design and administration of the Scheme (**para. 4.6**).

(e) The proposal to replace designated spots at central dividers of roads or close to pedestrian crossings has been unjustifiably shelved (**paras. 4.9 – 4.11**).

5.3 Nonetheless, we believe that these can all be addressed and should be rectified.

RECOMMENDATIONS

5.4 In the light of our observations, The Ombudsman recommends that the Administration take action as follows:

<u>Lands D in conjunction with the relevant bureaux</u>

(1) to articulate the objective of the Scheme for public information (**paras. 2.3 and 4.1**);

<u>Lands D</u>

(2) to revise the rules for proper administration of the Scheme, including --

(i) prohibition of transfer, "loaning out" or assignment of allocated spots (**para. 4.2**);

(ii) clearly visible acknowledgement, on the banner, of the individual or organisation allocated the banner spot. The display must be relevant to the objective of the Scheme and the individual or organisation allocated the spot should be the chief beneficiary of the display

(**para. 4.3**); and

(iii) a clear indication in practical terms what contents may be allowed and what not for the banners (**para. 4.5**);

Lands D with the help of HAD

(3) to seek views from the public at large or interest groups before consulting LegCo and DCs (**para. 4.7**); and

(4) to reconsider replacement or cancellation of the designated spots at central dividers of roads or close to pedestrian crossings (**para. 4.11**).

5.5 Lands D generally accepted the above recommendations.

ACKNOWLEDGEMENT

5.6 The Ombudsman thanks the Director of Lands and her staff for assistance throughout this investigation.

Office of The Ombudsman
Ref. OMB/DI/177
December 2008

ANNEXES

Annex 1
(para. 1.3)

Summary of Observations and Suggestions in the Direct Investigation Assessment on Management of Non-Commercial Publicity Materials on Roadside August 2006

Observations and Opinions

(a) The absence of a limit on the number of designated spots might breed proliferation.

(b) The effectiveness of written warnings issued by FEHD against dilapidated displays was doubtful.

(c) The long duration of display and adverse weather would necessitate imposing requirements for the choice of materials and the maintenance of the displays.

(d) Firmer and more frequent prosecution and summonses are necessary for greater deterrent.

(e) Separate sets of statistics on removal of commercial and non-commercial publicity materials should be maintained for better management and assessment of the situation.

(f) The amount of costs recovered was far too small for the resources and staff efforts involved.

Suggestions

The Ombudsman recommended that Lands D and FEHD as appropriate should:

(a) consider setting a cap on the number of designated spots for non-commercial displays;

(b) re-examine the criteria for selection of designated spots;

(c) consider imposing requirements for the use of durable or standardised materials for displays;

(d) introduce a provision to require proper maintenance of displays;

(e) include dilapidated displays as targets for removal in joint operations;

(f) step up removal of dilapidated displays after spells of adverse weather;

(g) maintain separate statistics for removal and cost recovery actions;

(h) step up efforts for cost recovery; and

(i) reconsider the practice for summonses and prosecutions.

Annex 2

(para. 2.11)

地政總署
Lands Department

路旁展示非商業宣傳品管理計劃實施指引

Management Scheme for the Display of Roadside Non-commercial Publicity Materials Implementation Guidelines

1. 指定地點的選擇

立法會議員及區議會議員可自選宣傳品展示點，所選展示點不得影響交通安全及市容。其他使用者，例如政府部門及非牟利團體的指定展示點則由區議會、民政事務處及地政處協商決定。

2. 指定展示點的分配

(a) 立法會議員

地方選區產生的立法會議員，每位可在其地方選區所覆蓋的每一個區議會選區選取 50 個指定展示點[1]。功能界別及選舉委員會產生的每位議員，可在全港 18 區每區選取 9 個指定展示點。議員須將其指定展示點平均分布於各區議會選區內。除了有特別需要的部分功能界別議員外，議員在區議會選區內的指定展示點，可超過配額最多 2 個展示點，惟每人所得指定展示點的總數不得超越以上所述的總體限額。地政處每年會爲分配指定展示點進行抽籤。

(b) 區議員

每位區議員可在其選區內選取 10 個指定展示點；實際數目視乎個別區議會對地政處提出的意見而定。

(c) 在指定展示點供不應求的情況下，地政處會抽籤決定分配展示點。有關申請人均會獲邀監察抽籤過程。

(d) 在立法會或區議會議員放棄使用其指定展示點；該等指定展示點將撥入其他使用者，例如政府部門及非牟利團體的配額內。他們日後有需要時，可從這配額中選取其展示點。

(e) 其他使用者

(i) 每個區議會及其轄下委員會在其區內可使用至少 30 個指定展示點。

(ii) 政府部門(包括民政事務處)在全港 18 區內每

[1] 以下 8 區除外：大埔、沙田、西貢、元朗、離島、荃灣、葵青及灣仔

1. Choice of Designated Spots

Members of the Legislative Council (LegCo) and District Councils (DCs) can choose designated spots that will not affect traffic safety and streetscape for the display of their publicity materials. Other users', i.e. government departments' and non-profit making organizations', designated spots are determined jointly by the DCs, District Offices (DOs) and District Lands Offices (DLOs).

2. Allocation of Designated Spots

(a) LegCo Members

Each LegCo Member from Geographical Constituencies (GC) can choose 50 designated spots in each of the DC districts within his/her own GC[1]. For Functional Constituencies (FCs) and Election Committee (EC), each Member may choose 9 designated spots in each of the 18 DC districts. Members shall distribute their designated spots evenly among the DC districts. With the exception of some Members from FCs with special needs, Members may exceed their aforesaid quota by up to two spots in a DC district provided that the overall total number of their designated spots is not exceeded. Annual balloting of designated spots will be organised by DLO.

(b) DC Members

Subject to any advice of individual DCs to the DLO, each DC Member may select 10 designated spots in his/her own constituency.

(c) When there are competing applications for designated spots, a ballot will be conducted by the DLO to determine the successful applicant. All applicants will be invited to witness the balloting process.

(d) When designated spots are not taken up by LegCo or DC Members, they will be transferred to the pool for other users, i.e. government departments and non-profit making organizations. These Members may select designated spots from the pool when they need them in future.

(e) Other users

(i) Each DC and its committees may take up not less than 30 designated spots within the district.

(ii) Government Departments including DOs may take up not less than 50 designated spots per district within the

[1] With the exception of eight districts (Tai Po, Sha Tin, Sai Kung, Yuen Long, Islands, Tsuen Wan, Kwai Tsing and Wanchai)

區可使用至少 50 個指定展示點。

(iii) 每區至少有 100 個指定展示點供非牟利組織使用，以供展示以該區居民爲對象的宣傳品。非牟利組織包括由政府資助或根據《稅務條例》第 88 條獲豁免繳稅的非政府組織及慈善團體、根據《社團條例》(第 151 條)登記的組織、根據《職工會條例》(第 332 條)及《職工會登記規例》(第 332A 條)登記的職工會及合法註冊的團體。

(iv) 每次獲批准的申請團體最多可獲分配 5 個展示點。

(f) 地政處協同民政事務處及區議會，根據區內可用的指定展示點數目，分配展示點給各類別使用者。

3. 使用期

給予上文第 2(a)及(b)段類別申請人的批准期，一般涵蓋其在有關議會的整段任期。至於上文第 2(e)段類別申請人的批准期，則爲兩個曆月，惟不包括最後兩天。在不引致對其他申請者的利益構成任何損失的原則下，延長展示期的申請可能會獲得批准。

4. 宣傳品尺寸

宣傳品的高度不得超逾 1 米，長度不得超逾 2.5 米。展示有關規格的說明圖則，載於圖一。

18 districts.

(iii) For non-profit making bodies, there will be a minimum of 100 designated spots per district for the display of publicity materials serving the local community. Non-profit making bodies include non-governmental organisations (NGOs) and charitable bodies either subvented by government or exempted from paying tax under Section 88 of the Inland Revenue Ordinance, organisations registered under Society Ordinance Cap. 151, trade unions registered under Trade Union Ordinance Cap. 332 and Trade Union Registration Regulations Cap. 332A, and legally registered bodies.

(iv) Each successful applicant will be allocated a maximum of 5 spots.

(f) The DLOs will co-ordinate with DOs and DCs on the number of spots to be allocated to the different users with reference to the number of designated spots available in the district.

3. Term

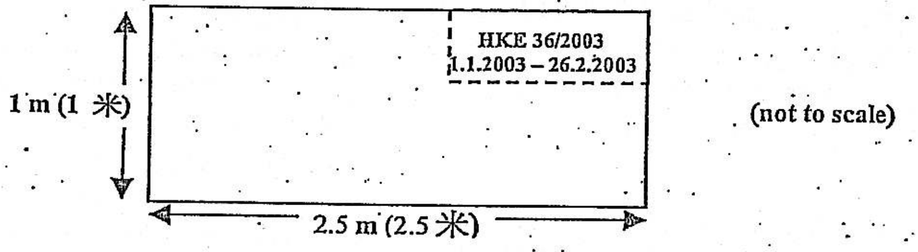
Approval given to applicants under paragraph 2(a) and (b) above will normally cover the tenure of their term with their Councils concerned. The approval under paragraph 2(e) above will cover a display period of two calendar months less the last 2 days. Applications for extension of display periods may be granted provided that there is no prejudice to other applicants.

4. Size of Publicity Materials

The size of the publicity materials to be displayed shall not exceed 1 metre in height and 2.5 metres in length. An illustrative plan showing the specifications is at Figure I.

圖一. 路旁宣傳橫額/街板規格

Figure I. Roadside Banner/Board Specifications



在宣傳橫額/街板右上角的核准展示期的字體不得小於 2.5 厘米 x 2.5 厘米。

Each character of the approval number and display period at the right-hand corner of the banner/board must not be smaller than 2.5 cm x 2.5cm.

5. 指定展示點的位置

宣傳品可面向行人路及行車道。惟高速公路旁展示的宣傳品只可面向行人路；同一位置上分別面向行人路及行車道的宣傳品，會作佔用兩個指定展示點計算。

6. 交通安全守則

爲交通安全起見，指定展示點一般不可位於下列地方：

(a) 行車或行人天橋上；

(b) 政府建造行人過路處，即燈號控制過路處、斑馬線、或行人輔助線的交通上游 30 米距離之內；

(c) 交通交匯點及行人過路處 30 米內的路中心分

5. Location of Designated Spots

Publicity materials will be allowed to face both the pavement and the roadway. However, if displayed alongside an expressway, publicity materials will only be allowed to face the pavement. Publicity materials facing both the pavement and the roadway will be counted as two designated spots.

6. Road Safety Code

For road safety purposes, designated spots will not be located :

(a) on flyovers or footbridges;

(b) within 30 metres on the traffic upstream side of government built pedestrian crossings including signal-controlled crossing, zebra crossings or cautionary crossing;

(c) on central divider of roads within 30 metres from road

隔欄；

(d) 雙程路與大路交匯處。但單程路之內的指定展示點如不阻擋駕駛者出大路的視線，則不受 30 米安全距離的限制。

說明 30 米安全距離的圖則，載於圖二。

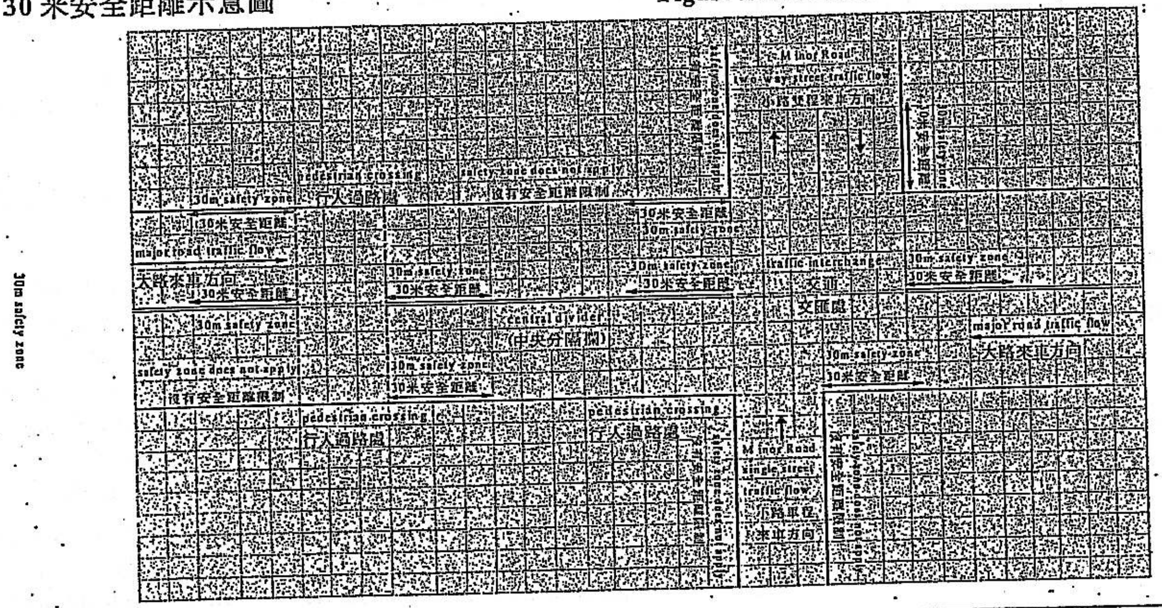
junctions or pedestrian crossings; and

(d) at the junction of a dual way road and a major road. But designated spots within a one-way street will not be subject to the 30-metre safety restriction if they do not obstruct the views of drivers getting on to a major road.

A plan illustrating the 30-metre safety zone is in Figure II.

圖二. 30 米安全距離示意圖

Figure II. Illustration of 30m Safety Zone



7. 宣傳品內容

(a) 宣傳品只可包括下列內容：

(i) 關乎公眾利益的節目或非商業的活動；

(ii) 推廣社區服務；及

(iii) 立法會/區議會議員及政治團體在選舉期以外向公眾提供他們有興趣或可惠及他們的一般資料。原則上，有關資料不得宣傳任何收費商品及服務或任何形式的收費訓練班和活動。惟由政府部門及非政府機構/慈善團體合辦關乎社會服務的收費或免費活動則不受限制。

(b) 非牟利公眾活動的宣傳品倘印載給予贊助的商業機構或如公益金一類的非牟利組織的名稱及商標，必須事先得到地政專員批准；贊助機構的名稱及標誌所佔的總面積，不得超過宣傳品面積的十分之一。

(c) 所有宣傳品的內容均須符合香港特別行政區的法律。任何淫褻或意識不良的宣傳品均不得展示。

(d) 宣傳品除可展示申請人的名字外，亦可包括其他人的名字。

(e) 申請獲得批准並不表示香港特別行政區政府及其人員批准宣傳品的內容。

7. Content of Publicity Materials

(a) The content of publicity materials should include only :

(i) events of public interest or non-commercial activities;

(ii) promotion of community services; and

(iii) information of general interest and benefit to the public provided by LegCo/DC Members and political bodies outside election periods. In principle, the information must not include the promotion of any commodities or services provided at a fee or any form of fee paying training courses and activities. However, fee paying or non-fee paying social service related events organised jointly by government departments and NGOs/charitable bodies will not be restricted.

(b) Publicity materials containing names and logos of commercial firms or non-profit making bodies such as the Community Chest sponsoring non-profit making public activities are subject to the prior approval of the District Lands Officer and the total size of the names and logos of the sponsors shall not be larger than one tenth of the area of the publicity material.

(c) The contents of the publicity materials to be displayed shall be in compliance with the laws of the Hong Kong Special Administrative Region. No publicity materials of an obscene or objectionable nature shall be displayed.

(d) Publicity materials may contain names of other persons apart from that of the applicant.

(e) The approval of applications does not imply the Government of the Hong Kong Special Administrative Region or its officers approve the contents of the publicity materials.

8. 申請的處理

(a) 申請人須填妥申請表並在預定展示期之前最少一個月送達有關地政處。如申請表並未填妥，或遞交申請的時間不足一個月，地政處均不能

8. Processing of Applications

(a) Duly completed applications shall be submitted to the relevant DLO no later than one month before the applicant's intended display period. The DLO cannot guarantee approval of the application by its intended display date if the application

保證可在其申請的展示期前批核有關申請。不過，如情況特殊，具備理據的緊急申請亦會獲得處理。

(b) 供非政府機構及慈善團體申請的指定展示點，以 5 個散佈於區內各處的展示點爲一組分配，以供這個類別的申請者使用。

(c) 不論批准與否，地政處一律以書面通知申請人有關結果，而不會收取任何費用。

(d) 當局在選舉期間會暫時停止接受有關申請或臨時取消已批核的申請。

9. 宣傳品的展示和管理

(a) 每件宣傳品的右上角均須以不小於 2.5 厘米 x 2.5 厘米的字體標明其核准編號及核准展示期。宣傳品須在其選擇/獲分配的指定地點上展示，並須以穩固而獨立的方式裝設妥當以致不會於風中搖擺，亦不得阻礙行人或車輛交通。

(b) 宣傳品的內容須與申請表所述的相同，如得地政專員書面同意，申請人可改動宣傳品的內容。

(c) 嚴禁以金屬線或釘把宣傳品穩固在任何公路結構、欄杆、分隔牆、圍欄、標杆或任何其他街道設施上。

(d) 申請人須對宣傳品及其內容承擔一切責任，並須同意就地政專員批准展示宣傳品所引致或因此而引致的一切責任、費用、開支、行動、訴訟、申索及要求，永久負責彌償香港特別行政區政府及/或其任何人員的損失。

(e) 申請人不得展示任何商業宣傳品。

(f) 申請人須於核准展示期屆滿後立即拆除宣傳品，否則食物環境衞生署署長會清除及處置該等宣傳品，並對有關申請人採取法律行動和追討拆除宣傳品的費用。

(g) 食物環境衞生署署長會拆除在指定地點以外展示或任何阻礙公眾通道及其維修或改善工程的宣傳品，並對有關申請人採取法律行動和追討拆除宣傳品的費用。

(h) 如發現有未經許可或妨礙任何緊急修理工程的宣傳品，當局會予以拆除而不作任何通知。未經許可的宣傳品不會發還予物主；食物環境衞生署署長可對有關物主採取法律行動和追討拆除宣傳品的費用。

is incomplete or is submitted less than one month. However, urgent applications with justifications under special circumstances will also be processed.

(b) Designated spots for applications by NGOs and charitable bodies will be divided into groups. Each group consists of 5 different designated spots, located in various parts of the district to cater for the needs of such applications.

(c) All applicants will be notified of the results in writing. No fees will be charged for applications.

(d) Applications and approvals for display of publicity materials will be temporarily suspended or revoked during election periods.

9. Display and Management of Publicity Materials

(a) Each piece of publicity material to be displayed will be required to bear on its top right hand corner the approval number and the approval period with digits of not smaller than 2.5cm x 2.5cm in size. The materials must be displayed at its chosen/allocated designated spot and shall be firmly and separately fastened so that they will not dangle in the wind or cause obstruction to pedestrians and vehicular traffic.

(b) The content of publicity materials must be the same as that described in the application form. Subject to the written consent of the District Lands Officer, an applicant may alter the content of his/her publicity materials.

(c) The use of wire and nail for fixing the publicity materials onto any highway structure, railing, barrier, fence, post or any other street furniture is strictly prohibited.

(d) The applicant is responsible for the publicity materials and the contents thereof and agrees to indemnify and keep indemnified the Government of the Hong Kong Special Administrative Region and or any of its officers against all liabilities, costs, expenses, actions, proceedings, claims and demands arising out of or in connection with the permission granted by the District Lands Officer for the display of the publicity materials.

(e) No commercial advertisements shall be permitted.

(f) Upon expiry of the approved period of display, the publicity materials shall be removed immediately by the applicants. Any publicity materials not so removed will be cleared and disposed of by the Director of Food and Environmental Hygiene (DFEH), who will also take legal action and claim removal expenses against the applicant concerned.

(g) DFEH will remove publicity materials displayed outside the designated spots or those which obstruct public access and its repair and improvement works. DFEH will take legal action and claim removal expenses against the applicant concerned.

(h) Publicity materials which are unauthorized or affect emergency repair works shall be removed without notification. Unauthorized publicity materials will not be returned to the owners. DFEH may take legal action and claim removal expenses against owner concerned.